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GUILFORD F. THORNTON, JR.
gthornton@stokesbartholomew.com

December 3, 2002

The Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

RE: Complaint of Ben Lomand Communications, Inc. Against
Citizens Communications Company of Tennessee, Inc. d/b/a Frontier
Communications of Tennessee

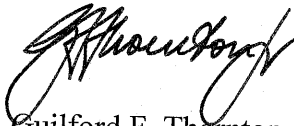
TRA Docket No. 02-01221

Dear Chairman Kyle:

On behalf of Citizens Telecommunications Company of Tennessee, LLC, I am enclosing with this letter an original and thirteen copies of a Motion to Dismiss Complaint for filing in the above referenced matter. A copy has been served on counsel for Ben Lomand Communications, Inc.

Should you have any questions or require anything further at this time, please do not hesitate to contact me.

Sincerely,



Guilford F. Thornton, Jr.

cc: Mike Swatts
Gregg Sayre

**BEFORE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

**IN RE: COMPLAINT OF BEN LOMAND COMMUNICATIONS, INC. AGAINST
CITIZENS COMMUNICATIONS COMPANY OF TENNESSEE, LLC, d/b/a
FRONTIER COMMUNICATIONS OF TENNESSEE.**

DOCKET NO. 02-01221

**CITIZENS TELECOMMUNICATIONS COMPANY OF TENNESSEE'S
MOTION TO DISMISS THE COMPLAINT**

Citizens Telecommunications Company of Tennessee ("Citizens") files this Response to the Complaint (the "Complaint") of Ben Lomand Communications, Inc. ("BLC") in this matter. Citizens objects to BLC's Complaint as being hopelessly flawed procedurally and substantively. Citizens requests that the Authority dismiss the Complaint without convening a contested case.

In support of this request and in response to the Complaint, Citizens states as follows:

I. THE PARTIES

1. Citizens is an incumbent local exchange telephone company ("ILEC"), as defined in T.C.A. § 65-4-101, serving White County/Sparta, Warren County/McMinnville, Weakley County, Putnam County, and Cumberland County exchanges.

2. BLC is a competing local exchange telephone company ("CLEC"), as defined in T.C.A. § 65-4-101, offering services in Warren and White Counties. BLC is a wholly owned subsidiary of Ben Lomand Rural Telephone Cooperative ("Ben Lomand").

3. Ben Lomand asserts on its website that it is the "5th largest telephone Cooperative in the nation and now serves approximately 36,535 customers." (Company History, www.blomand.net/overview/past.htm)

4. According to Ben Lomand's web site, since entering the Sparta and McMinnville markets, BLC "concluded the year with 6,047 access lines, an increase of over 71%." Furthermore, "BLC ended the fiscal year with net income of \$573,336, more than twice as large as any previous year." (CEO Report, www.blomand.net/overview/managers.htm).

II. FACTUAL BACKGROUND

5. Citizens filed a tariff with the Authority on April 11, 2002 (the "Tariff") offering two new services to business customers in McMinnville and Sparta. The terms of the Tariff are a matter of record before the Authority. As BLC states in the Complaint, Citizens' Tariff offers business customers rate reductions in return for term commitments, and there are additional discounts with certain bundled services. The same terms and conditions are offered to all business customers in the McMinnville and Sparta exchanges.

6. As the Authority's records will show, Citizens filed the Tariff in its initial form on February 14, 2002. The Authority's staff reviewed the Tariff at that time and requested, among other things: cost support, a change in termination language, a change in the monthly credits and some other miscellaneous changes. Citizens provided the information requested and made the requested changes. The Tariff in its present version

was then refilled on April 11, 2002. The Authority never challenged or disputed the cost support or the proposed rates.

7. In TRA Docket Number 00-00965, the Authority previously approved a tariff filing by Citizens that established a lower Automatic Access Line ("AAL") rate for business customers in McMinnville and Sparta than Citizens charges customers in its other Tennessee exchanges.

8. In TRA Docket Number 00-00963, the Authority also approved a special promotion that waived installation charges for customers specifically in McMinnville and Sparta.

9. In TRA Docket Number 02-00088, Citizens filed with the Authority a written notification requesting the approval of a promotion to waive non-recurring charges associated with basic local service for customers in the McMinnville and Sparta exchanges, which mirrored the previous promotions offered to those customers and approved by the TRA. The Consumer Advocate and Protection Division of the Office of the Attorney General (the "Consumer Advocate") requested that the Authority convene a contested case, alleging that the promotion amounted to unjust discrimination between Citizens' customers in the McMinnville/Sparta exchanges and those in Citizens' other territories. On April 24, 2002, the Authority dismissed the Consumer Advocate's complaint. In its order (attached hereto as Exhibit A), the Authority found that "Citizens is experiencing stiff competition in its McMinnville and Sparta exchanges, while facing minimal competition in its exchanges located in Weakley, Putnam and Cumberland counties. Accordingly, the Authority finds the competitive pressure prevalent in the

McMinnville and Sparta exchanges is sufficient justification for limiting the offer to these two exchanges.”

10. The Tariff became effective on May 12, 2002. Now, six months later, BLC makes the same arguments previously made by the Consumer Advocate, which the Authority has rejected already. In its Complaint, BLC asserts that the Tariff is (a) unjustly and unduly preferential and/or discriminatory, (b) predatory, and (c) an illegal special contract.

III. LEGAL ANALYSIS & ARGUMENT

11. Pursuant to TRA Rule 1220-1-2-.02(2)(b) & (c), the Authority may not convene a contested matter if, “as a matter of law, no hearing is required for the disposition of a matter... [or] the relief which the petition seeks is on its face barred as a matter of law. . .” A complaint must “set forth with specificity the factual basis and legal grounds upon which the complaint is based.” TRA Rule 1200-1-2-.09(1)(c). Moreover, a complaint opposing a tariff “shall be filed no later than seven (7) days prior to the Authority Conference immediately preceding the proposed effective date of the Tariff.” TRA Rule 1220-1-2-.02(4).

12. BLC’s Complaint should be dismissed because: (a) BLC failed to file a timely Complaint opposing the Tariff as required by TRA Rule 1220-1-2-.02(4); (b) the Authority has already held that Citizens can offer incentives to customers in its McMinnville and Sparta exchanges to meet the competition in that area, and for those same reasons it is clear that the Tariff is reasonable and not unjustly or unduly preferential or discriminatory; and (c) BLC has offered no allegation setting forth with

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specificity the factual basis for its contention that the pricing offered in the Tariff is predatory or an illegal special contract; nor is there any proof to support such contentions.

A. BLC's Complaint Should Be Dismissed Because It Was Not Timely Filed.

13. As stated above, TRA Rule 1220-1-2-.02(4) provides that at a complaint opposing a tariff "shall be filed no later than seven (7) days prior to the Authority Conference immediately preceding the proposed effective date of the tariff." In this case the Tariff states on its face that it was effective May 12, 2002. According to the Authority's records, the Authority Final Conference held immediately preceding that effective date was on May 7, 2002. BLC's Complaint was not filed until November 13, 2002. Therefore, it should be dismissed because it was untimely filed.

B. The Complaint Should Be Dismissed Because The TRA Has Already Correctly Found On Three Separate Occasions That Citizens Can Offer Incentives In Its McMinnville And Sparta Exchanges To Meet Competition.

14. The central objection raised by BLC is that the Tariff unreasonably prefers customers in Citizens' Sparta and McMinnville exchanges.¹ In that regard it cites the following statutory authority:

a. T.C.A. § 65-4-122(a), which forbids a public utility from charging or receiving from different persons different amounts for the same services "under substantially like circumstance s and conditions . . ." (emphasis added);

¹ It does not appear that BLC takes issue with the fact that business customers may be treated differently from residential customers.

b. T.C.A. § 65-4-122(c), which forbids a public utility from giving an “undue or unreasonable preference” to a customer (emphasis added).

c. T.C.A. § 65-4-123, which states that the regulation of telecommunication service providers shall protect the interests of consumers “without unreasonable prejudice or disadvantage to any telecommunication service provider.”

d. T.C.A. § 65-5-204(a)(1), which prohibits a public utility from establishing any rate that which is “unreasonable, unjustly, discriminatory, or unduly preferential.”

15. The Authority has already held, by its Order, dated April 24, 2002 (Docket Number 02-00088) that a tariff such as this Tariff is reasonable and is not unjustly discriminatory or unduly preferential.

16. In its April 24, 2002 Order, the Authority heard arguments, considered the evidence and approved a Citizens’ tariff offering a promotion to customers in its McMinnville and Sparta exchanges over the objection of the Consumer Advocate. BLC did not file an objection to that tariff or seek to intervene in that matter. The Authority found that “Citizens is experiencing stiff competition in its McMinnville and Sparta exchanges, while facing minimal competition in its exchanges located in Weakley, Putnam and Cumberland counties. Accordingly, the Authority finds the competitive pressure prevalent in the McMinnville and Sparta exchanges is sufficient justification for limiting the offer to these two exchanges.”

17. Likewise, prior to its April 24, 2002 Order, the Authority in TRA Docket Numbers 00-000963 and 00-00965 approved other special promotions Citizens offered to customers in the McMinnville and Sparta exchanges without objection or intervention by BLC or its parent company.

19. The Authority's rulings are consistent with T.C.A. §65-4-123, which sets forth the pro-competitive policy of the State to "foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets." T.C.A. § 65-4-123. The regulation of service providers such as Citizens "shall protect the interests of consumers without any unreasonable prejudice or disadvantage to any telecommunications service provider." Id. In that regard Citizens must be allowed to compete with BLC by utilizing the tools available to it; otherwise it will be unreasonably prejudiced. As it stands, Citizens is competing with an affiliate of an entrenched, well-funded telephone cooperative, which is relatively unregulated. Granting BLC's request would deprive the residents of McMinnville and Sparta of the benefits of that competition.

19. With regard to T.C.A. § 65-4-122(a) and (c), cited by BLC, those code sections prohibit different treatment of persons "under substantially like circumstances and conditions" and "undue or unreasonable" preferences, respectively. The Authority recognized that conditions are substantially different in McMinnville and Sparta than they are in the other exchanges served by Citizens. In McMinnville and Sparta there is substantial competition from a CLEC, which, under favorable regulatory conditions, is winning customers away from Citizens on a daily basis. Competitive conditions are significantly different in Weakley, Putnam and Cumberland Counties. Therefore, the preferences to businesses in McMinnville and Sparta are not undue or unreasonable.

C. The Tariff Does Not Result In Predatory Pricing Or Other Violations Of T.C.A. § 65-5-208(c).

20. T.C.A. § 65-5-208(c) requires an ILEC, such as Citizens, to adhere to a price floor for its competitive services. There is no allegation that the prices in the Tariff are below the price floor set forth in T.C.A. § 65-5-208(c). In addition, the records of the TRA will reflect that Citizens filed cost support for the Tariff, and that the prices in the Tariff are above the cost justified.

D. The Tariff Is Not A Special Contract And Does Not Violate Tennessee Law.

21. BLC asserts that the Tariff is a special contract in violation of Tennessee law. However, it cites no Tennessee law in support of this proposition.

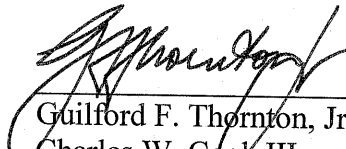
22. The Tariff is not a special contract. Special Contracts prescribe and provide “rates, services and practices not covered by or permitted in the general tariffs, schedules or rules filed by such utilities . . .” TRA Rule. 1220-4-1-.07. See also Proposed TRA Rule 1220-4-2-.59(d). By virtue of the fact that the rates at issue are in the Tariff, they are not special contracts.

23. BLC cites to a letter from the Attorney General, dated May 31, 2002 (the “AG letter”) wherein the Attorney General expresses concerns about the increase in special contracts in the state. In fact, however, the Attorney General stated, that “special contracts, in proper circumstances, are permissible, and the TRA has authority to make rules governing their terms.” (A.G. letter, page 6). The Attorney General further noted that FCC rules allow for volume and term discounts. (AG letter, page 4). As demonstrated above, the Tariff is a generally available term and package discount, which

has been thoroughly reviewed by the Authority. Therefore it does not fall within the scope of the concerns raised in the Attorney General's letter.

WHEREFORE, Citizens requests that the Authority dismiss the Complaint filed by BLC and decline to convene a contested case

Respectfully submitted,



Guilford F. Thornton, Jr.

Charles W. Cook III

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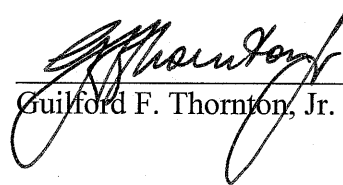
*Counsel for Citizens Telecommunications
Company of Tennessee*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on the following individuals via U.S. mail, postage prepaid, this 4th day of December, 2002.

H. LaDon Baltimore
Farrar & Bates, L.L.P.
211 Seventh Avenue North
Suite 420
Nashville, TN 37219

Richard Collier, General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238



Guilford F. Thornton, Jr.